

### **REMARKS**

Claims 6-8 have been amended. No claims have been added or canceled. Accordingly, claims 1-22 remain pending in the application.

### **Priority**

Applicants appreciate the Examiner's acknowledgment of the claim for priority and safe receipt of the foreign priority document.

### **35 USC §112**

Claims 6-8 have been amended to overcome the Examiner's rejection under this section. In particular, "estimated restore performance" has been substituted for "estimated restore time".

### **35 USC § 103**

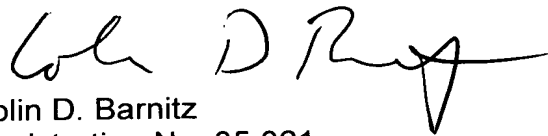
Claims 1-6 and 9-22 were rejected under 35 USC § 103(a) as being unpatentable in light of Kitagawa et al. (US 5522037) in view of Akamatu et al. (US 20040078628). However, the Akamatu et al. application is commonly owned with the present application, falls under the provisions of 35 USC § 103(c), and therefore cannot be used to preclude patentability of the present invention under 35 USC § 103(a). In particular, at the time the present invention was made, both the subject matter of the Akamatu et al. application and the present application were owned by or subject to an obligation of assignment to Hitachi Ltd. of Tokyo, Japan (see, e.g.,

reel 014153, frame 0113, for the assignment of the Akamatu et al. application to Hitachi, Ltd., and reel 015010, frame 0524, for the assignment of the present application to Hitachi, Ltd.). Further, it is noted that since the Akamatu et al. application has a publication date that is after the filing date of the present application, the Akamatu et al. application would only qualify as prior art under subsections (e), (f) or (g) of 35 USC § 102 if those sections were applicable. It is further noted that both the present application and the Akamatu et al. application were filed after November 29, 1999. Accordingly, since the provisions of 35 USC § 103(c) apply, the Akamatu et al. application is disqualified as prior art, and the rejections of claims 1-6 and 9-22 are traversed. This being the case, claims 1-22 are allowable over the art of record.

### **Conclusion**

In view of the foregoing amendments and remarks, Applicants contend that the above-identified application is now in condition for allowance. Accordingly, reconsideration and reexamination are respectfully requested.

Respectfully submitted,



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